

*NOTICE: This opinion is subject to formal revision before publication in the Board volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.*

**Empress Casino Joliet Corporation and American Maritime Officers.** Case 33-CA-12875

March 31, 1999

**DECISION AND ORDER**

BY MEMBERS FOX, LIEBMAN, AND BRAME

Pursuant to a charge filed on January 11, 1999,<sup>1</sup> the General Counsel of the National Labor Relations Board issued a complaint on January 22, 1999, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 33-RC-4247. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint and asserting affirmative defenses.

On February 19, 1999, the General Counsel filed a Motion for Summary Judgment. On February 23, 1999, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On March 2, 1999, the Union filed a statement in support of the General Counsel's Motion for Summary Judgment. The Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on Motion for Summary Judgment**

In its answer the Respondent admits its refusal to bargain, but attacks the validity of the certification on the grounds that the unit is composed of supervisors<sup>2</sup> and that the election was conducted by mail ballot.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any

<sup>1</sup> Although the Respondent's answer states that the Respondent is without sufficient knowledge or information to form a belief as to the truth of the complaint allegations concerning the filing and service of the charge, a copy of the charge and affidavit of service are attached to the General Counsel's motion. The Respondent did not contest the authenticity of these documents in its response to the Notice to Show Cause.

<sup>2</sup> The Respondent's request for review of the Regional Director's finding that the petitioned for unit is composed of Sec. 2(3) employees was denied by unanimous decision of the Board Panel.

representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

At all material times the Respondent, an Illinois corporation, has been engaged in the operation of two riverboat casinos at Joliet, Illinois. During the calendar year ending December 31, 1998, the Respondent, in conducting its business operations described above, purchased and received at its Joliet, Illinois facility goods valued in excess of \$50,000 directly from points outside the State of Illinois and derived gross revenues in excess of \$500,000 at its Joliet, Illinois facility.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.<sup>3</sup>

**II. ALLEGED UNFAIR LABOR PRACTICES**

**A. The Certification**

The Union was certified on December 18, 1998, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time Captains, First Mates, Chief Engineers and Assistant Engineers employed by the Employer at its Joliet, Illinois, facilities; but excluding all other employees, including office clerical employees, professional employees, managerial employees, guards and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

**B. Refusal to Bargain**

Since December 21, 1998, the Union has requested the Respondent to bargain, and, since January 7, 1999, the Respondent has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

**CONCLUSION OF LAW**

By refusing on and after January 7, 1999, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent has engaged in unfair labor practices affect-

<sup>3</sup> The Respondent denied the labor organization status of the Union. In the underlying representation case the Respondent did not request review of the finding of the Regional Director that the Union is a labor organization. Accordingly, it is precluded from challenging that status in this case. See Sec. 102.67(f) of the Board's Rules.

ing commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

#### ORDER

The National Labor Relations Board orders that the Respondent, Empress Casino Joliet Corporation, Joliet, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with American Maritime Officers, as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time Captains, First Mates, Chief Engineers and Assistant Engineers employed by the Employer at its Joliet, Illinois, facilities; but excluding all other employees, including office clerical employees, professional employees, managerial employees, guards and supervisors as defined in the Act.

(b) Within 14 days after service by the Region, post at its facility in Joliet, Illinois, copies of the attached notice marked "Appendix."<sup>4</sup> Copies of the notice, on forms provided by the Regional Director for Region 33 after being signed by the Respondent's authorized representa-

tive, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since January 7, 1999.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. March 31, 1999

---

Sarah M. Fox,	Member
---------------	--------

---

Wilma B. Liebman,	Member
-------------------	--------

(SEAL) NATIONAL LABOR RELATIONS BOARD

MEMBER BRAME, dissenting.

In the underlying representation proceeding, I dissented from my colleagues' denial of the Respondent's special appeal of the Regional Director's direction of a mail-ballot election. Accordingly, I dissent here from my colleagues' granting the General Counsel's Motion for Summary Judgment and their finding that the Respondent violated Section 8(a)(5) and (1) of the Act.

Dated, Washington, D.C. March 31, 1999

---

J. Robert Brame III,	Member
----------------------	--------

NATIONAL LABOR RELATIONS BOARD

#### APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with American Maritime Officers as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

<sup>4</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All full-time and regular part-time Captains, First Mates, Chief Engineers and Assistant Engineers employed by us at our Joliet, Illinois, facilities; but excluding all other employees, including office clerical employees, professional employees, managerial employees, guards and supervisors as defined in the Act.

EMPRESS CASINO JOLIET CORPORATION